

1 DAVID W. SHAPIRO (NYSB 2054054)  
United States Attorney

2 LESLIE R. CALDWELL (NYSB 1950591)  
3 Chief, Criminal Division

4 JOHN H. HEMANN (CSBN 165823)  
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055  
6 San Francisco, California 94102  
7 Telephone: (415) 436-6991

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12  
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 ROBERT POCSIK,

17 Defendant.  
18

Case No. CR-01-0317-CRB

PLEA AGREEMENT

19 I, Robert Pocsik, and the United States Attorney's Office for the Northern District of  
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
21 pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to count one of the captioned information charging me with  
24 conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371. I agree that the elements  
25 of the offense are as follows: (a) I knowingly conspired with one or more other people to violate  
26 the securities laws of the United States and (b) at least one of the conspirators committed at least  
27 one overt act in furtherance of the conspiracy. I agree that the maximum penalties are:

28 a. Maximum prison sentence 5 years

FILED

SEP. 05 2001

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

- 1                   b.       Maximum fine                               \$ 250,000  
2                   c.       Maximum supervised release term       3 years  
3                   d.       Mandatory special assessment               \$ 100  
4                   e.       Restitution                               to be determined by the Court

5           2.       I agree that I am guilty of the offense to which I will plead guilty, and I agree that  
6 the following facts are true:

7                   a. Indus International is a publicly traded company. Since August 1997, Indus'  
8 stock has been traded on the national market of the National Association of Securities Dealers'  
9 Automated Quotation System ("NASDAQ"), an electronic trading system. Indus had  
10 shareholders located throughout the United States, including in the Northern District of  
11 California. In 1999, Indus' headquarters was located in San Francisco, California.

12                  b. Indus is a provider of "enterprise asset management solutions." A significant  
13 part of Indus' revenue comes from the sale of licenses to use Indus' enterprise asset management  
14 software.

15                  c. From October 1998 to approximately January 11, 2000, I was employed by  
16 Indus as the Senior Vice President of Human Resources, Chief Administrative Officer, and had  
17 responsibility with respect to Sales from April 1999 through December 1999.

18                  d. Throughout 1999, Indus struggled to make its forecasted sales revenue  
19 numbers. On the last day of the third quarter of 1999 ("Q3 1999"), Indus' internal forecast  
20 showed that revenue from software license fees would fall short of revenue expectations.

21                  e. During Q3 1999, Indus sales representatives attempted to negotiate contracts  
22 with two Indus customers, Holmes & Narver and Maxon Engineering Services, Inc. If the  
23 revenue from these two contracts was obtained during Q3 1999, Indus would meet its forecasted  
24 sales revenue numbers; if not, Indus would fail to meet the forecast.

25                  f. Two Indus customers, Holmes & Narver and Maxon, entered into software  
26 license agreements with Indus. I agreed with other Indus employees, including CEO William  
27 Grabske, Vice President of Sales Ralph Widmaier, and General Manager of Sales Carl Albano, to  
28 take actions to cause Indus to recognize the revenue from these agreements in Q3 1999, even

1 though I knew that this revenue could not be recognized because the sales were subject to  
2 cancellation by the customers.

3 g. In furtherance of this agreement, Grabske, Widmaier, Albano, and I took the  
4 following actions, among others:

5 i. Grabske directed me to cause Indus to enter into side letters and  
6 agreements with Holmes & Narver and Maxon giving those companies the right to cancel their  
7 software license agreements with Indus. Widmaier, Albano, and I entered into these side  
8 agreements on behalf of Indus. Widmaier and Albano were acting at my direction. These side  
9 agreements were concealed from Indus' chief financial officer and her staff.

10 ii. Grabske, Widmaier, and I made and caused to be made false  
11 statements, and provided and caused to be provided false documentation to Indus' chief financial  
12 officer, her staff, and Indus' outside auditors regarding the Holmes & Narver and Maxon  
13 contracts.

14 iii. Grabske signed Indus' SEC Form 10-Q for the third quarter 1999. In  
15 this 10-Q, Indus reported revenue that included income from the software license agreements  
16 with Holmes & Narver and Maxon, even though he and I knew that the agreements were subject  
17 to uncertain future contingencies, including cancellation.

18 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
19 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
20 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
21 any other Fourth or Fifth Amendment claims; to any further discovery from the government, as  
22 may be limited by United States v. Ruiz, 241 F.3d 1157 (9<sup>th</sup> Cir. 2001); and to pursue any  
23 affirmative defenses and present evidence.

24 4. I agree to give up my right to appeal my conviction, the judgment, and orders of  
25 the Court. I also agree to waive any right I may have to appeal my sentence, except that I may  
26 appeal any sentence over 60 months.

27 5. I agree not to file any collateral attack on my conviction or sentence, including a  
28 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except that I

1 reserve my right to claim that my counsel was ineffective in connection with the negotiation of  
2 this plea agreement or the entry of my guilty plea.

3 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is  
4 entered.

5 7. I agree that I will make a good faith effort to pay any fine, forfeiture, or restitution  
6 I am ordered to pay. Before or after sentencing, I will, upon request of the Court, the  
7 government, or the U.S. Probation Office, provide accurate and complete financial information,  
8 submit sworn statements and give depositions under oath concerning my assets and my ability to  
9 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my  
10 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at  
11 the time of sentencing.

12 8. I agree to cooperate with the U.S. Attorney's Office before and after I am  
13 sentenced. My cooperation will include, but will not be limited to, the following:

- 14 a. I will respond truthfully and completely to any and all questions put to me,  
15 whether in interviews, before a grand jury, or at any trial or other proceeding;
- 16 b. I will provide all documents and other material asked for by the government;
- 17 c. I will testify truthfully at any grand jury, court, or other proceeding as requested  
18 by the government;
- 19 d. I will surrender any and all assets acquired or obtained directly or indirectly as a  
20 result of my illegal conduct;
- 21 e. I will request continuances of my sentencing date, as necessary, until my  
22 cooperation is completed;
- 23 f. I will tell the government about any contacts I may have with any co-defendants  
24 or subjects of investigation, or their attorneys or individuals employed by their  
25 attorneys; and
- 26 g. I will not reveal my cooperation, or any information related to it, to anyone  
27 without prior consent of the government.

28 9. I agree that the government's decision whether to file a motion pursuant to USSG  
§5K1.1, as described in the government promises section below, is based on its sole and  
exclusive decision of whether I have provided substantial assistance and that decision will be  
binding on me. I understand that the government's decision whether to file such a motion, or the

1 extent of the departure recommended by any motion, will not depend on whether convictions are  
2 obtained in any case. I also understand that the Court will not be bound by any recommendation  
3 made by the government. I understand that I reserve the right to file a motion for a downward  
4 departure based on extraordinary family circumstances.

5 10. I agree not to commit or attempt to commit any crimes before sentence is imposed  
6 or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);  
7 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial  
8 Services, or the government; or fail to comply with any of the other promises I have made in this  
9 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,  
10 then the government will be released from all of its promises, but I will not be released from my  
11 guilty plea.

12 11. If I am prosecuted after failing to comply with any promises I made in this  
13 Agreement, then (a) I agree that any statements I made to any law enforcement or other  
14 government agency or in Court, whether or not made pursuant to the cooperation provisions of  
15 this Agreement, may be used in any way; (b) I waive any and all claims under the United States  
16 Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal  
17 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my  
18 statements, or any leads derived from those statements; and (c) I waive any defense to any  
19 prosecution that it is barred by a statute of limitations, if the limitations period has run between  
20 June 5, 2001, and the date on which an information is filed.

21 12. I agree that this Agreement contains all of the promises and agreements between  
22 the government and me, and I will not claim otherwise in the future.

23 13. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
24 District of California only, and does not bind any other federal, state, or local agency.

25 The Government's Promises

26 14. The government agrees to move to dismiss any open charges pending against the  
27 defendant in the complaint that led to the captioned information at the time of sentencing.

28 15. The government agrees not to file or seek any additional charges against the

1 defendant that could be filed as a result of the investigation that led to the captioned information.

2 16. The government agrees not to use any statements made by the defendant pursuant  
3 to this Agreement against him, unless the defendant fails to comply with any promises in this  
4 agreement. The government may, however, tell the Court and the U.S. Probation Department  
5 about the full extent of the defendant's criminal activities in connection with the calculation of  
6 the Sentencing Guidelines.

7 17. If, in its sole and exclusive judgment, the government decides that the defendant  
8 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities  
9 within the meaning of USSG §5K1.1, and otherwise complied fully with this Agreement, it will  
10 file with the Court a motion under §5K1.1 and/or 18 U.S.C. § 3553 that explains the nature and  
11 extent of the defendant's cooperation and recommends a downward departure.

12 18. Based on the information now known to it, the government will not oppose a  
13 downward adjustment for acceptance of responsibility under USSG § 3E1.1. The government  
14 agrees that the defendant may file a motion for downward departure based on extraordinary  
15 family circumstances.

16 The Defendant's Affirmations

17 19. I confirm that I have had adequate time to discuss this case, the evidence, and this  
18 Agreement with my attorney, and that he has provided me with all the legal advice that I  
19 requested.

20 20. I confirm that while I considered signing this Agreement and, at the time I signed  
21 it, I was not under the influence of any alcohol, drug, or medicine.

22  
23  
24  
25  
26  
27  
28 / / /

1           21. I confirm that my decision to enter a guilty plea is made knowing the charges that  
2 have been brought against me, any possible defenses, and the benefits and possible detriments of  
3 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
4 one coerced or threatened me to enter into this agreement.

5  
6 Dated: 9/5/01

  
ROBERT POCSIK  
Defendant

8  
9 DAVID W. SHAPIRO  
United States Attorney

10  
11 Dated: 9/5/01

  
JOHN H. HEMANN  
Assistant United States Attorney

12  
13  
14 I have fully explained to my client all the rights that a criminal defendant has and all the  
15 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
16 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
17 me, his decision to plead guilty is knowing and voluntary.

18  
19 Dated: 9/5/01

  
WILLIAM GOODMAN  
Attorney for Defendant